SUBMISSION TO THE ROYAL COMMISSION ON INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

ISSUES PAPER 11: THE CATHOLIC CHURCH

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Introduction

As the Royal Commission is well aware, I have had an intermittent, but extensive involvement over the past 17 or more years in assisting the Church to respond to the problem of child sexual abuse committed by church personnel.

I was first asked to review Towards Healing (TH) in 1999. This fulfilled a promise made by the Church in launching TH in 1996 that it would review the protocol after a few years of operation. This review involved questionnaires being sent to a great variety of stakeholders, including of course victims and accused persons. I was asked to review it again, about 10 years later, although this review was much more cursory. It was based only upon submissions and discussions.

As is also well-known, I formally disassociated myself from the work of the Church in 2011, following the refusal of the National Committee for Professional Standards to implement its commitment to publish a report I had written on some serious issues concerning the Salesians of Don Bosco. This religious Society runs a number of schools and other activities, for boys. The Salesian College, Rupertswood in Sunbury, Victoria, has had a particularly appalling history in terms of sexual abuse. My report, based upon documents that the Salesians made available, was written after I had urged the Church to institute an independent inquiry into these matters, but it had declined to do so.
I withdrew my support for TH publicly because the Church was failing to honour the promises it had made in the Principles section of that document that it would commit to being truthful, and that it would deal with offenders by not giving them back the power that they had abused. The refusal to establish an independent review of the Salesian issues, and then to fail to publish my own report on the matter, was a monumental failure of integrity.

This submission offers some brief reflections on the current situation in the Church. As I have written elsewhere, I do so as a friend of the Church, but not as a Catholic. I come from an evangelical tradition of faith. I admire the faithfulness of so many devout Catholics in Australia today, and am conscious of the enormous contribution that the Church worldwide has made over many centuries to the inculcation of faith, the wellbeing of the poor and to social justice. I have worked alongside Catholic brothers and sisters who risked their lives for the sake of the gospel when I lived in Bratislava, Czechoslovakia, during the communist period in 1981-82. I retain good friendships with leaders in the Catholic Church in Australia.

The Catholic sexual abuse crisis is a tragedy – of course for the victims, but also for the Church. The work of the Royal Commission has now ensured a comprehensive examination of all institutions, and it is apparent that the Catholic Church is far from alone in either having child sex abusers in its ranks or in how it has dealt with the problem. Nonetheless, the Royal Commission’s work has also confirmed the pattern seen in many other parts of the world, that disproportionately, the offenders have been Catholic priests and religious.

The Church will not easily survive the crisis created by the problem of child sexual abuse if it continues the patterns of response that have been too common in the past. This brief submission offers some observations on how far it has come and what issues may remain. In particular, I offer some observations on the question of what may have changed in the Church’s responses after four years of the work of the Royal Commission.
The intention of Towards Healing

TH has had its share of negative commentary over the years, some of it valid, no doubt, but in other respects ill-informed. In the two reviews I conducted, I would have been much helped if critics had engaged more in the review process and provided evidence of where it was not working as was intended. The tendency of critics to take a negative and oppositional approach was unfortunate, for I have no doubt that many of those who were behind the development of TH were absolutely committed to addressing the needs of victims.

This is illustrated perhaps by the conversation I had with Bishop Geoffrey Robinson, when he first asked me to conduct the review of TH in the late 1990s. I did not know Geoffrey at the time. In that initial telephone call, I asked him who was the ‘audience’ for the review. Who needed to be persuaded? Was it the bishops and leaders of religious orders, or the victims? His reply was unequivocal. He wanted victims to know the sincerity of the Church’s response to sexual abuse – whether the victims were children or adults.3

When Geoffrey wrote to me on behalf of the National Committee formally, inviting me to review TH, he committed in advance to accept all my recommendations unless the Committee had good cause not to do so, in which case it would discuss the matter with me first. That was an extraordinary commitment to have made. Governments establish inquiries and reviews the whole time, but it is the fate of all too many such inquiries that their recommendations languish thereafter with not so much as a response, let alone any implementation. The approach taken by the National Committee was the clearest possible evidence of a strong commitment, at least from this group, to respond appropriately to victims.

In this early work on TH, I found many other church leaders who were absolutely dedicated to the support of victims. I recall one national meeting with the Convenors of the Professional Standards Resource Groups in each State in which we discussed the extension of TH to address issues of physical abuse. (Originally, it had dealt only with sexual abuse.) There were those present who wanted an expansive definition of physical abuse to respond to all those who felt they had been ill-treated in Catholic orphanages and children’s homes whether or not the conduct complained of was seen as acceptable in the institutions in that era. In the end (and concerned that the TH scheme be sustainable) I recommended that the definition be to include punishment that was not acceptable by the standards of the time.

3 It is perhaps not widely appreciated that TH deals not only with child sexual abuse but with the exploitation by priests and religious of the pastoral relationship by having sexual relations with adults, most of whom are women.
Uniformly, the attitude I found among people involved at the ground level with the process of TH - whether as support persons, investigators or facilitators - was one of wanting to do the right thing for victims.

For these reasons, I do not doubt the integrity and sincerity of those who established TH. It was pioneering work, back in 1996. No other Church had such a scheme at the time. I am not aware of other countries in which the Church had taken such steps, although the Irish bishops certainly attempted to do so around the same time, before being rebuked by the Congregation for Clergy in the Vatican. Any fair history of the response of the Church to child sexual abuse ought to acknowledge the integrity and commitment of people like Bishop Robinson and Sr Angela Ryan who were in the forefront of the Church’s response.

The limitations of Towards Healing

That said, when I began to look at TH, I was struck by two important limitations in what could be achieved.

The first was that there is no such thing as the Catholic Church in Australia. Geoffrey Robinson explained the problem well to me: from the outside, the Church appears as a monolithic and hierarchical institution. However, he said, it is more like a flotilla of ships scattered across the Pacific Ocean. It is very difficult indeed to achieve collective action in the Catholic Church, for each diocese and religious Order is its own independent authority, answerable, in the case of diocesan bishops, only to the Vatican and in the case of religious orders, also to their international leadership. That every diocese except Melbourne, and every religious Order except, at the time, the Jesuits, had signed up to TH was in itself an immense achievement.

While almost all the dioceses and Orders could agree on a common process, outcomes remained entirely a matter for each Bishop or Leader of the religious Order. The Archdiocese of Melbourne had established a compensation panel to determine monetary awards. I always thought that was a good idea. However, that could only be done because it was part of an individual diocesan response, establishing some degree of consistency in awards made on behalf of the one Archbishop. It was made clear to me that other Bishops and Leaders would not

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5 There is no common terminology for what I call ‘religious orders’, or their leaders. The official collective term is a ‘religious institute’. This includes congregations, orders and societies. Those in charge go by a variety of different names. Herein they are collectively called Leaders. They rotate, with each leader typically holding office for three to five years. In contrast Bishops remain in office until their resignation is accepted by the Pope, or until death, whichever comes earlier.

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compromise their independence by committing to accept the decisions of an independent body that would determine compensation awards. Indeed, the very word 'compensation' was to be avoided – I used the word 'reparation' instead.

Consequently, I designed the second iteration of TH so as to establish as much independence as could be achieved in the process, by having it managed by the Director of Professional Standards, while still leaving outcomes in the hands of the Bishops and Leaders. That approach was accepted by the Church. It is possible that more could now be achieved, but back then, and again in 2010, outcomes both in terms of responses to victims and dealing with alleged offenders, were a matter for each individual Bishop or Leader.

The second problem was Canon Law. TH was, and is, a protocol that deals both with the response to victims and to alleged offenders. In its first iteration in 1996, the process in terms of how to investigate complaints and to respond to victims was clear and detailed, albeit that so much was left to the discretion of individual Bishops and Leaders in terms of outcome.

By way of contrast, there was little detail on how the Church would respond to those found to be offenders. The Principles promised that offenders would not be given back the power that they had abused, but, aware of the Nestor case, for example, I had difficulty seeing how that could be achieved if a priest or religious insisted on his innocence and appealed to Rome in accordance with Canon law. At the time, the normal limitation period for complaints of sexual misconduct was only five years. Most child victims of clergy abuse do not pursue redress or report matters to the police for many years after reaching adulthood. Canon law is the internal governance system for the Catholic Church, but it is woefully deficient as a means of addressing child sexual abuse, and remains so, notwithstanding that the limitation period has now been extended to 20 years after reaching adulthood. Canon law still characterises the rape of children as a moral problem, an offence against the sixth commandment ("thou shall not commit adultery").

I dealt with the problem of Canon law in the first review of TH by requiring that as far as possible, the mechanism used to investigate and report on alleged abuse be consistent with the requirements of the law governing the alleged abuser’s employment. TH does not apply only to priests and religious. It applies to all Catholic personnel, including many who would have claims under civil law for unfair dismissal if the process were not well-handled. Canon law remained a major potential obstacle in dealing with priests or religious, although there was some

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7 Sacramentorum Sanctitatis Tutela, revised 2010.
8 Canon 1395, s.2.
'wriggle room'. I sought, in the first review, to make the connection with Canon law more explicit, to provide at least some appearance of consistency. Not long afterwards, the Vatican endorsed it as a protocol which could operate as the preliminary investigation stage of the penal process in Canon law. That was as much as could be achieved.

**The limitations continue to be a problem**

Nothing much has changed since then in terms of these two fundamental problems.

**The governance problem**

The Church’s governance structure can best be understood as a mixture between ecclesiastical community and feudal principality. The theology of the Church, particularly after Vatican II, reflects the former. The governance structure of the Church still reflects the latter.

The governance system of the Church is, rather literally, medieval, notwithstanding reforms introduced by Vatican II. Its character still reflects the way in which the various kingdoms and other state entities of medieval Europe were governed before the emergence of modern democratic institutions. The Pope was once the absolute ruler of Italian territories, known as the Papal States. That territorial governance now extends only to the confines of Vatican City, in which the Pope has absolute executive, legislative and judicial authority. The model nonetheless applies beyond the walls of the Vatican. The Pope has executive, legislative and judicial authority for the Church worldwide, supported by the institutions of the Vatican. He may share that authority with the Bishops collectively, to some extent, but that is more accurate as a statement of the Church’s theological self-understanding, than it is of its actual governance structure. Neither the doctrine of the separation of powers nor the idea of democracy have had much purchase, even after Vatican II.

While the Pope has supreme authority, bishops are also lords of their domain. Under the ultimate direction of the Pope and the subsidiary authorities of the Vatican, each Bishop has complete legislative, executive and judicial authority within his own diocese, subject to the constraints of Canon law. To be sure, the modern Bishop has delegates, advisory groups, business managers and others, but he does not share decision-making power with them except to the extent that he does so voluntarily. The Cardinal may be a prince of the Church, but he has no authority over the Dukes,

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9 The governance structure of the Church is explained in the Catholic Church in Victoria’s submission to the parliamentary inquiry, *Facing the Truth* (2012). The submission (p.7) records that: “In the Church, the three powers of governance (legislative, executive and judicial) are not required to be exercised by different persons or bodies as in modern democratic governments. The Pope alone normally exercises these three powers.”

10 *Facing the Truth* ibid.
Counts, Marquises and other nobles of the Church - that is, the local bishops and archbishops.

It is a mistake therefore to think that Archbishops have any authority over diocesan bishops, or that Cardinals in a given country have any authority over Archbishops. Their authority is at the most based upon prestige and perhaps some influence in the Vatican. There is not a hierarchy of governance within countries or regions.

Religious orders are likewise relatively autonomous. They are not subject to the Bishops, or Archbishops, or the regional Cardinal. If a religious Order priest runs a parish, or a religious brother or sister holds an office within a diocesan structure, then he or she is subject to the Bishop to that extent, but not otherwise.

Religious orders are answerable to the Pope, who is advised by a body within the Vatican. Many religious Orders have an international leadership, other than the Pope, to which the Australian leadership is subject. For example, the Christian Brothers, which were founded in Ireland at the beginning of the 19th Century, have four Provinces – Oceania, Europe, North America and Africa. Each province is led by a Province leadership team. The entire congregation of the Christian Brothers operates under the Congregation Leader who is based in Rome.

It follows that there is quite simply no management structure within the Australian Catholic Church beyond the conferences of Bishops and religious Leaders. Nor is there majority voting. Either each diocese or religious order agrees to go along with the consensus, or it does not. There is no general synod, no parliament and certainly no democracy.

Put differently, the Catholic Church has a large number of middle managers and a CEO, but lacks an effective senior management structure to act as an intermediary between one and the other. What senior management structure there is exists only in the various Councils and departments of the Vatican, and that management system might be regarded as woeful – as the Royal Commission’s Case Study on Father Nestor illustrated,11 and as is illustrated by quite recent scandals such as that of the Vatican Bank. Nor is there a collective decision-making structure which can bind dissenters to a majority position other than through the rare decision-making Councils called by the Pope. Perhaps this balance between central authority and local autonomy was a necessity in 14th century Europe, and worked well enough in that time. As a governance structure for a worldwide Church in the 21st century, it leaves much to be desired.

Bishops and Leaders come and go. Some are excellent, others indifferent, and others worse than that. For the purposes of the Royal Commission, the Australian Bishops

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11 See above, n. 6.
and Leaders have come together to establish the Truth, Justice and Healing Council, which has played a very constructive role in the Royal Commission’s work; but it would be a mistake to think that any submissions it makes, or commitments it offers, carry the Church’s collective imprimatur. Even if all Bishops and Religious Leaders at a given date signed up to offer commitments to the Australian people, these would not, and could not, bind their successors. That is the governance problem at the heart of Catholicism.

The problem of Canon law

The second problem that remains is Canon law. The problem is both legal and cultural. The legal problem is that it remains grossly inadequate for investigating and dealing with child sexual abuse by priests and religious in circumstances where, for whatever reason, there is either no criminal prosecution at all or, if there is, it does not result in a conviction. All institutions working with children need to have available to them effective investigative and disciplinary systems to deal with alleged child sexual abuse by people who have protections under employment law. These must be capable of operating in a timely manner, subject of course to the requirements of procedural fairness. TH has operated quite well as a means of providing that internal investigatory framework, as has the Melbourne Response; but this is despite Canon law, not because of it.

The cultural problem is, that as I explained in the Smith Lecture, the Catholic Church is to some extent a law unto itself. There remains an attitude that the Church, with its long heritage of being self-governing before the emergence of the modern nation-state, still has primary authority over its priests and religious through the Church’s own legal system. That attitude means that it may not defer to the nation-states of the countries in which its priests or religious reside except to the extent that it has to do so.

I do not say this of the Australian Church as a whole; it has clearly articulated a policy from the inception of TH that complainants be encouraged to go to the police. However, my sense of it is that this cultural belief remains embedded in the attitudes of some Church leaders who have demonstrated less than complete cooperation with the police and civil authorities, and less than a complete acceptance that the sexual abuse of children is a grave offence for which perpetrators ought to be punished through the criminal justice system. It is telling that many have remained in good standing within the Church despite convictions for child sexual abuse or credible allegations that are accepted by the Church authority.
The matters I dealt with in the Salesian report are illustrative of this. Perhaps another example of the less than complete cooperation with civil authority is the lengths to which [REDACTED] went to resist the extradition of two of its members to face charges in New Zealand, even seeking special leave to appeal to the High Court. It is unimaginable that an Australian bank, for example, would fight to resist the extradition of one of its managers to New Zealand on fraud charges.

Surely any religious Order that is appalled by child sexual abuse would make full cooperation with the police and civil authorities a condition of remaining in good standing in the Order, subject of course to the individual’s right to put forward a proper defence to criminal charges. Hiding alleged offenders overseas or fighting extradition proceedings to countries with mature and fair legal systems is not consistent with responsible citizenship.

**Religious training and celibacy**

I have written elsewhere of my belief that celibacy has played a significant role in fuelling the propensity of some Catholic priests and male religious to abuse children. That is contested, but perhaps it wouldn’t be contested so strongly were it not for the fact that the Church has a theological commitment to the retention of this obligation. The disproportionate level of sex offending against children by Catholic priests and male religious cries out for explanation. In some religious orders, the numbers seem to be particularly high as a proportion of all those in the Order over a given time period.

It is no doubt the case that fifty or more years ago, priests and religious were not nearly as well-prepared for a life of celibacy as they are now, and nor as well-supported to lead that life. I understand that in Australia, selection processes have changed to provide for more rigorous screening, and men embark upon the path towards the priesthood at a much older age than they once did. These changes are all to the good.

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12 However, it must be emphasised that Fr Murdoch, during his time as Provincial, acted with integrity and propriety within the constraints of his limited authority.

13 For example, evidence given by Br Crowe of the Marists to the Royal Commission for the purposes of the Towards Healing Inquiry indicated that since 1948, there have been some 1,046 Marist Brothers in Australia. According to a document provided to the Royal Commission, there have been approximately 140 brothers named as possible perpetrators of child sexual abuse (minutes of the October 2013 Marist Professional Standards Advisory Committee meeting, item 5). The figure is in the vicinity of 13% of the Brothers (although it is possible some allegations relate to men who were not members of the Order from 1948 onwards). For the document see CTJH.053.13001.0007_R at https://www.childabuseroyalcommission.gov.au/exhibits/e424cf7d-250f-4a28-9cde-367872e54651/case-study-4-december-2013-sydney.
However, I would caution against over-confidence that this resolves the problem. In recent years, the Catholic Church in Australia has certainly struggled to find young men willing to enter the priesthood and there are many fewer ordinands than there once were. That is a real problem in terms of replacing priests who are in their twilight years. The Church does not have a theological tradition of lay leadership, and so doctrinally, the replacement of priests is essential. When demand is greatly in excess of supply, standards may drop, even if the decision to do so is an unconscious one.

The Australian Church is increasingly reliant upon the importation of priests from overseas. How exacting are the formation and selection processes for priests in the other countries from which Australia draws its priests - many of which are developing nations? In many developing countries with large and devout Catholic communities, there has not been the same focus upon the problem of child sexual abuse as in Europe, North America and Australasia, and perhaps not the same preventive measures such as screening.

The future of Towards Healing

Given the constraints outlined above, and in particular, the insistence that each Bishop and Leader is autonomous and makes his own decision about outcomes, it is difficult to see how any internal protocol the Church adopts could be all that different from TH. This should not be interpreted as being defensive - in hindsight there are definitely things I could have done differently and better. However, a much more effective process would require the Church to surrender decision-making power to an independent entity, especially over levels of compensation. That, in the Catholic Church system, would involve major change.

The failures of TH would seem to be not in its basic design - within the constraints - but in gross failures of implementation. Case Study 4 on TH illustrates some of the problems. It was revealed therein, to my astonishment, that the Marist Brothers had for years run their own process, with their own Director of Professional Standards who fulfilled all the functions that were designed to be independently managed. This would seem to have been the case notwithstanding that for a time, a Marist Brother was co-chair of the National Committee for Professional Standards.

The Case Study also revealed the extent to which lawyers were advisers in the shadows, which may have undermined the intent that TH should operate as a pastoral response. Catholic Church Insurances also seems to have played a significant role as a behind-the-scenes decision-maker. Evidently, it fulfilled an ethical and constructive role, but inevitably there was a tension between a scheme designed to meet the needs of the victim based upon the degree of harm caused, and the approach of an insurance company with commercial imperatives which assessed its willingness to pay with at least some reference to the extent of its
exposure to civil liability. The legal and insurance drivers of behaviour sit in tension with the pastoral focus of the scheme, and it may well be that the tension is irresolvable.

I remain uncertain what the future of TH will be given its loss of credibility. The answer, no doubt, lies in adoption of the Royal Commission’s redress scheme in one form or another and the Truth, Justice and Healing Council has supported this. However, progress on establishing such a scheme has been very slow; and it is far from clear to me that one will emerge either nationally, or as a co-ordinated federal system involving similar State-based programs.

What will the Catholic Church do if no scheme emerges – or is unlikely to emerge soon? Unless there is a significant surrender of autonomy by dioceses and religious orders, allowing for some form of independent arbitration of compensation payments and some auditing of the practices of different Catholic entities, it is very difficult to see how there can be much improvement in what TH currently is able to deliver. The alternative is of course that the compensation issues are resolved through civil litigation, leading in almost all cases, if not all, to some form of settlement. That is a much more expensive system, given the high costs of legal representation in the context of a litigation process.

‘Bad apples’ and institutional failure

The ultimate test of whether the Royal Commission has achieved much is that institutions are forever changed in its wake. Across the spectrum of institutions, both government, and non-government, and across the country, there is much ground for optimism. Lessons have been learned, not least because the Royal Commission has forced so much that was shrouded in secrecy into the cold light of day. Even institutions that may not have done the right thing for the right reasons have at least been shamed now into doing the right thing.

I have absolutely no doubt that within the Catholic Church, there are some new and dynamic leaders who will forge a pathway of change within their dioceses and religious Orders. Two of the younger Archbishops, in particular, come to mind. The Church is also blessed with many fine lay leaders, both male and female, some in positions of great prominence in the Australian community. They could offer outstanding leadership to the Church nationwide if given the opportunity.

However, I must reluctantly caution against an assumption that just because the Royal Commission has done its work, that all institutions have changed and that none will fall back into old ways of doing things when the spotlight ceases to be upon them. The Royal Commission has had to be very selective in terms of its case studies. In the Catholic Church, the great majority of dioceses and some male religious
Orders with apparently large numbers of alleged offenders, have escaped the spotlight. No doubt they are breathing a sigh of relief.

I would be more optimistic if the gross systemic failures had been decades ago – before 1996 for example. I would be more optimistic also if the attempts at minimisation of the problem and cover-up were not so very recent. However, it is only in 2012 that in response to a parliamentary inquiry in Victoria, Catholic Church entities in that State produced a document called Facing the Truth which seemed to me to do anything but. The line seemed to be a familiar one that discovery of the problem of child sexual abuse has been quite recent (from the late 1970s onwards), and that when it was discovered, the Church acted, albeit imperfectly. It is simply not true that the Church was unaware of the problem. Bishops had been receiving complaints of sexual abuse from parents for many years, and the problem had been repeatedly identified across the centuries. 14 Facing the Truth was largely exculpatory, notwithstanding the expressions of deep regret.

My experience with the Salesians, and the suppression of my report, was also a very recent one. I have told that story at length in my submission to the Victorian inquiry,15 and it does not need to be repeated here. Suffice it to say that it involved some of the Church's most senior leaders who reneged both on a commitment to publish my report and, as an alternative, to hold an independent inquiry as had been recommended by eminent Senior Counsel.

In fairness, they were trying to manage a problem that arises from the structure of the Church. The National Committee for Professional Standards, which ran the TH process, was entirely dependent on funding from the dioceses and religious orders. As I understand it, they were caught between a rock and a hard place. There was, I was told, a threat that at least some male religious orders would cease to fund TH if my report were released. I have recorded in my submission to the Parliamentary Inquiry the efforts which were made to ensure this. The National Committee complied with that demand, which proved to be a bad choice, because the Salesians did not succeed in avoiding public exposure, and nor did those responsible for the cover-up.

15 See above, n.1.
Have things changed in the Church across the country? Of course I hope so. However, it is worth observing, as a matter of postscript, that as far as I am aware, the leadership of the Salesians has never admitted wrongdoing, and has never apologised.

Nor have the senior Church leaders involved offered any apology. All those involved in that cover-up continue to be in good standing in the Church, some still holding senior leadership positions. That is not reassuring.

I would also be more optimistic if there was more evidence of a different approach to defending litigation. If a full accounting were given of the amount of money Catholic institutions have spent on legal fees in defending themselves or their priests or religious in the criminal or civil courts, compared with the amounts they have paid out in compensation to victims, it might reveal their priorities eloquently. If a full accounting were made of the extent to which this is so as recently as the 2015-2016 financial year, it may also be revealing.

It would be easy to write the problems off as a few 'bad apples'; however, the problems that have brought the Church to the very edge of disaster and beyond, trashing its reputation as a moral leader, were never just because of a few bad apples. The problems were institutional and cultural.

The question must, regretfully be asked, to what extent they still are.

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July 2016

17 I have addressed this claim fully in the right of reply, ibid.
18 The Executive Officers of the National Committee have done so with considerable humility and grace - but they were not the decision-makers.